IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA
Civil Writ Petition No.708 of 2001.
Date of decision:04.01.2007

M/s.Saraswati Cements Pvt.Ltd. **….Petitioner.**

Versus

Mohd.Alias & Others **…Respondents.**

Coram

The Hon'ble Mr.Justice Dev Darshan Sud, J.

Whether approved for reporting ?[1]

For the Petitioner: **Mr.Rahul Mahajan, Advocate.**

For Respondents 1 to 3: **Mr.Jagdish Thakur, Advocate.**

Dev Darshan Sud,J.

By way of the present writ petition the petitioners have challenged the award of the learned Labour Court on number of grounds.

Facts relevant for the decision of the case are that the Management had instituted domestic enquiry against the three petitioners namely, Mohd. Alias, Intzar Ali and Kashmiri Khan. On the conclusion of the enquiry, all three were dismissed from service. Reference under Section 10 of the Industrial Disputes Act, 1947, (hereinafter referred to as the Act), was made to the learned Labour Court, which , vide its order dated 21.12.1995 framed the following issues:-

> "1. Whether the termination of the petitioners from service by the respondent is not legally sustainable on the grounds as set out in the claim reference? …OPP.

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgement***?

2. Relief".

While disposing of the petition, the learned Labour Court, relied upon two decisions of the Hon'ble Supreme Court, namely, ***Union of India and others*** vs. ***Mohd.Ramzan, 1991 Lab.I.C.308*** *and* ***Managing Director, ECIL,Hyderabad etc.etc.*** vs. ***B.Karunakar, 1994 Lab.I.C.762,*** holding that since copy of the enquiry report has not been served on the workmen, this amounted to denying the fair opportunity to them and thus violative of the principles of natural justice. As a consequence, the dismissal of the petitioners was held to be illegal and they were ordered to be reinstated with seniority and full back-wages.

During the pendency of the writ petition in this Court, an order was passed on 10.1.2002 to the following effect:-

> ***"CMP No.1699 of 2001.***
>
> Heard. Allowed. In the facts and circumstances on record it is ordered that the non-applicant-petitioner will re-engage the respondents or pay them wages last drawn by them from 28.8.2001 when interim stay was granted in its favour till 28.2.2002".

This order has admittedly not been complied with. Rather than dismissing the writ petition for non-compliance of this order, I have heard the parties on merit. On going through the judgment, I

find that it is not in accordance with the two judgments relied upon as noticed above. After holding that the enquiry report had not been supplied which constituted a violation of the principles of natural justice, learned Labour Court was also required to adjudicate as to whether such non-supplying of the report had caused any prejudice to the workmen. This was a mandatory application of the principle as postulated by the Hon'ble Supreme Court. The decision has been subsequently reiterated in ***State Bank of Patiala and others Vs. S.K. Sharma***, (***1996) 3 SCC 364, Oriental Insurance Co. Ltd. vs. S. Balakrishanan, AIR 2001 SC 2400 and Om Parkash Mann Vs. Director of Education (Basic) and others, 2006 LLR 1121,*** amongst other cases.

Without expressing any opinion on the other allegations made in the writ petition, it is directed that the matter should be re-determined by the Labour Court to ascertain as to whether any prejudice was caused to the workmen or not by non-supply of the inquiry report. The learned Labour court will hear the parties afresh after giving them notice.

I find from the record that the petitioners have not complied with the provision of Section 17-B of the Act. The learned Labour Court shall ensure that such compliance is made by the petitioners when the matter is taken up by it for re-determination. The writ petition is, accordingly, allowed to this

extent. The Labour Court will determine the issue of prejudice and ensure compliance of the order passed by this Court on 10.1.2002 in CMP No.1699/2001. There shall be no order as to costs.

January 4, 2007 **(Dev Darshan Sud)**
(aks) **Judge.**